# Ambiga a/p Sreenevasan v Ketua Pengarah Imigresen, Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R2–25–117 OF 2011
ROHANA YUSUF J
4 AUGUST 2011

*Administrative Law — Judicial review — Application for — Ex parte application for leave to apply — Preliminary objection — Whether respondents' counsel could be present in ex parte leave application — Whether first and third respondents were proper parties to application — Whether court had jurisdiction to hear application — Whether applicant had arguable case — Immigration Act 1959/63 ss 59A & 67 — Rules of the High Court 1980 O 15 r 6 & O 53*

On 15 April 2011, when Ambiga a/p Sreenevasan ('the applicant') arrived at Kuching airport from Kuala Lumpur she was denied entry into the state of Kuching. At the Immigration Department Counter she was given a notice of refusal of entry and had to leave Sarawak on the next available flight for Kuala Lumpur. This was the applicant's application for leave for a judicial review of the decision of the Pengarah Imigresen Sarawak ('the second respondent') to deny her entry into the state of Sarawak. By way of this action the applicant sought an order of certiorari to quash the decision of the second respondent to deny her entry into Sarawak and an order of mandamus to compel the Ketua Pengarah Imigresen Malaysia ('the first respondent'), the second respondent and the Ketua Menteri Sarawak ('the third respondent') to permit her to enter Sarawak. At the hearing, the applicant objected to the presence of the respondents' counsel. The applicant raised the preliminary objection that since the application for leave was an ex parte application, the respondents were not entitled to be present in court at this stage of the proceedings. The respondents raised three objections to the applicant's leave application, namely, that the first and third respondents were not the proper parties to this application; that the court had no jurisdiction to hear this application; and that the applicant had no arguable case. The respondents contended that in issuing the impugned decision, the second respondent was acting under the authority of the state authority and not under the direction of the first respondent or the third respondent. Thus, since neither the first nor the third respondents were in any way involved in the impugned decision, the respondents contended that they could not be a party to this application. In response the applicant submitted that even if this application cited wrong parties it could be saved by virtue of O 15 r 6 of the Rules of the High Court 1980 ('RHC'), which provides that no cause or matter shall be defeated because of misjoinder of parties. In respect of jurisdiction, it was the respondents' case that since the High Court of Sarawak

would be the proper forum, this court did not have the necessary jurisdiction to hear this matter. The applicant submitted that at this leave stage it needed to only establish an arguable case, which it had. It was the applicant's case that even though the decision of the second respondent was not subjected to a judicial review, as provided under s 59A of the Immigration Act 1959/63 ('the Act'), the applicant's case came within the exception to that section because the impugned decision did not comply with procedural requirement. The applicant further submitted that the applicant should be allowed entry under s 67 of the Act on the grounds that she was entering for the sole purpose of engaging in legitimate political activity.

**Held**, dismissing the application for leave with no order as to costs:

(1) The fact that the reliefs sought in this application would invariably affect the public officer or authority that made the impugned decision in the state of Sarawak in itself was sufficient reason to justify the presence of the respondents' counsel in this court. Further their presence to address the issue on whether or not there was a proper application before the court may prevent waste of judicial time on a vexatious and/or frivolous application. As such, although the applicant objected to the presence of the respondents' counsel at the ex parte application it was found that there were good reasons for their presence in court (see paras 4 & 5).

(2) The applicant's submission that even if this application cited wrong parties it could be saved by virtue of O 15 r 6 of the RHC could not hold in the light of the present state of the law. According to the Federal Court O 15 r 6(2) did not apply to an application made under O 53of the RHC, based on the maxim 'generalia specialibus no derogant'. Thus, since neither the first nor the third respondents were the decision makers of the impugned decision, judicial review could not lie against them, and on this ground alone the present application ought to be struck out (see paras 11 &12).

(3) On the issue of jurisdiction, it was found that the cause of action arose in Sarawak, that the proper respondents were in Sarawak and that the facts on which the proceedings were based occurred in Sarawak. Thus, the proper forum for the present application would be the High Court of Sarawak and there was no provision for this court to transfer the present proceedings to the right forum in Sarawak (see paras 13–15).

(4) Although the applicant pleaded that her case came within the exception to s 59A of the Act she did not plead sufficient material to state the alleged procedural requirement or the breach thereof under the Act or the Regulations. There was also insufficient material to support the contention that the applicant was entering Sarawak under s 67 of the Act. In any event, her contention of entry based on s 67 of the Act was only made after the event (see paras 17–19).

**[Bahasa Malaysia summary**

Pada 15 April 2011, apabila Ambiga a/p Sreenevasan ('pemohon') tiba di Lapangan Terbang Kuching dari Kuala Lumpur dia menafikan masuk ke Kuching. Di Kaunter Jabatan Imigresen, dia telah diberikan penafian kemasukan dan hendaklah meninggalkan Sarawak pada penerbangan seterusnya ke Kuala Lumpur. Ini merupakan permohonan pemohon untuk kebenaran bagi semakan kehakiman keputusan Pengarah Imigresen Sarawak ('responden kedua') untuk menafikan kemasukannya ke Negeri Sarawak. Melalui tindakan ini pemohon memohon untuk perintah certiorari untuk membatalkan keputusan responden kedua untuk menafikan kemasukkannya ke Sarawak dan perintah mandamus bagi mendesak Ketua Pengarah Imigresen Malaysia ('responden pertama'), responden kedua dan Ketua Menteri Sarawak ('responden ketiga') untuk membenarkannya memasuki Sarawak. Semasa perbicaraan, pemohon membantah terhadap kehadiran peguam responden-responden. Pemohon membangkitkan bantahan awalan bahawa memandangkan permohonan untuk kebenaran merupakan permohonan ex parte, responden-responden tidak berhak untuk hadir di mahkamah pada peringkat prosiding ini. Responden-responden membangkitkan tiga bantahan terhadap permohonan kebenaran pemohon, iaitu, bahawa responden pertama dan ketiga bukanlah parti yang sesuai untuk permohonan ini; bahawa mahkamah tidak mempunyai sebarang bidang kuasa untuk mendengar permohonan ini; dan bahawa pemohon tidak mempunyai kes yang boleh dihujah. Responden-responden berhujah bahawa dalam mengeluarkan keputusan yang dipersoalkan, responden kedua telah bertindak di bawah kuasa pihak berkuasa dan bukan di bawah arahan responden pertama atau ketiga. Justeru, memandangkan responden pertama atau ketiga tidak terlibat dalam apa cara sekalipun dalam keputusan yang dipersoalkan tersebut, responden-responden berhujah bahawa mereka tidak boleh menjadi pihak kepada permohonan tersebut. Sebagai balasan pemohon berhujah bahawa meskipun permohonan telah menyebut pihak-pihak yang salah ia boleh diselamatkan melalui A 15 k 6 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), yang mana memperuntukkan bahawa tidak terdapat kausa atau perkara akan diketepikan disebabkan tersalah cantum pihak-pihak. Mengenai bidang kuasa, adalah menjadi kes responden-responden bahawa memandangkan Mahkamah Tinggi Sarawak merupakan perantaraan yang sesuai, mahkamah ini tidak mempunyai bidang kuasa yang berpatutan untuk mendengar perkara ini. Pemohon berhujah bahawa pada peringkat kebenaran ini ia hanya perlu menunjukkan kes yang boleh dihujah, yang dia telah buktikan. Adalah menjadi kes pemohon bahawa meskipun keputusan responden kedua tidak tertakluk terhadap semakan kehakiman, seperti yang diperuntukkan di bawah s 59A Akta Imigresen 1959/63 ('Akta tersebut'), kes pemohon tertakluk terhadap pengecualian seksyen tersebut oleh kerana keputusan yang dipersoalkan itu tidak mematuhi keperluan prosedur. Pemohon selanjutnya berhujah bahawa pemohon seharusnya diberi kebenaran

untuk masuk di bawah s 67 Akta atas alasan bahawa dia telah masuk semata-mata dengan tujuan untuk melibatkan diri dalam aktiviti politik yang sah.

**Diputuskan**, menolak permohonan untuk kebenaran tanpa perintah untuk kos:

(1) Fakta bahawa relief-relief yang dipohon dalam permohonan ini akan selalunya memberi kesan terhadap pegawai awam atau pihak berkuasa yang membuat keputusan yang dipersoalkan dalam Negeri Sarawak secara tersendiri merupakan sebab yang mencukupi untuk menjustifikasikan kehadiaran peguam responden-responden di mahkamah ini. Selanjutnya kehadiran mereka untuk menangani isu tentang sama ada atau tidak terdapat permohonan yang wajar di hadapan mahkamah boleh mengelakkan pembaziran masa kehakiman terhadap permohonan yang menyusahkan dan remeh. Oleh demikian, meskipun pemohon membantah kehadiran peguam responden-responden semasa permohonan ex parte adalah didapati bahawa terdapat sebab-sebab yang baik untuk kehadiran mereka di mahkamah (lihat perenggan 4 & 5).

(2) Hujahan pemohon bahawa meskipun permohonan ini menyebut pihak-pihak yang salah ia boleh diselamatkan melalui A 15 k 6 KMT tidak boleh dikekalkan melihat kepada kedudukan undang-undang kini. Mengikut Mahkamah Persekutuan A 15 k 6(2) tidak digunapakai terhadap permohonan yang dibuat di bawah A 53 KMT, berdasarkan maksim 'generalia specialibus no derogant'. Justeru, memandangkan responden pertama atau ketiga bukanlah pembuat keputusan bagi keputusan yang dipersoalkan tersebut, keputusan mereka tidak boleh disemak secara kehakiman dan berdasarkan alasan ini semata-mata permohonan ini seharusnya dibatalkan (lihat perenggan 14 & 15).

(3) Mengenai isu bidang kuasa, adalah didapati bahawa kausa tindakan timbul di Sarawak, bahawa responden-responden yang bersesuaian adalah di Sarawak dan bahawa fakta-fakta yang mana disandarkan oleh prosiding-prosiding berlaku di Sarawak. Justeru, perantaraan yang sesuai untuk permohonan ini adalah Mahkamah Sarawak dan tidak terdapat peruntukan untuk mahkamah ini untuk memindahkan prosiding in kepada perantaraan yang betul di Sarawak (lihat perenggan 13–15).

(4) Meskipun pemohon telah memplid bahawa kesnya tertakluk kepada pengecualian s 59A Akta dia tidak memplid material yang secukupnya untuk menyatakan keperluan prosedur yang didakwa atau pelanggaran di bawah Akta atau Peraturan-Peraturan. Terdapat juga material yang tidak mencukupi untuk menyokong hujahan bahawa pemohon telah memasuki Sarawak di bawah s 67 Akta. Dalam apa keadaan, hujahannya untuk masuk berdasarkan s 67 Akta hanya dibuat selepas kejadian tersebut (lihat perenggan 17–19).]

**Notes**

For cases an application for judicial review, see 1(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 254–279.

**Cases referred to**

*Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association* [1990] 3 MLJ 228; [1990] 2 CLJ 734, SC (refd)

*Dayasar Corp Sdn Bhd v CP Ng & Co Sdn Bhd* [1990] 1 MLJ 191; [1990] 1 CLJ 262, HC (refd)

*Fung Beng Tiat v Marid Construction Co* [1996] 2 MLJ 413; [1997] 2 CLJ 1, FC (refd)

*George John v Goh Eng Wah Bros Filem Sdn Bhd & 2 Ors* [1988] 1 MLJ 319 (refd)

*Gobalakrishnan Nagapan v Director of Immigration & Ors* [2009] 2 CLJ 703, HC (refd)

*John Peter Berthelsen v Director-General of Immigration* [1986] CLJ (Rep) 160, SC (refd)

*Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914, FC (refd)

*Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307; [2009] 6 CLJ 405, FC (refd)

*Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72; [2002] 4 CLJ 105, FC (refd)

*Tuan Hj Sarip Hamid & Anor v Patco Malaysia Berhad* [1995] 2 MLJ 442; [1995] 3 CLJ 627, SC (refd)

**Legislation referred to**

Courts of Judicature Act 1964 s 23(1)
Federal Constitution art 121
Immigration Act 1959/63 ss 3(2), s 59A, 62, 64, 65, 65(1)(a), 67
Rules of the High Court 1980 O 15, O 15 rr 6, 6(2), O 53, O 53 rr 3(3), 8

*Tommy Thomas (James Khoong with him) (James Khong) for the applicant.*
*Azizah Nawawi (Senior Federal Counsel, Attorney General's Chambers) on behalf attorney general's chambers.*
*Fong Joo Chung (State Legal Counsel, Kamar Peguam Besar Negeri Sarawak) for the third respondent.*

**Rohana Yusuf J:**

**[1]** This is an application for leave for a judicial review seeking the following reliefs:

(a) An order of certiorari to quash the notice of refusal of entry dated 15

April 2011 issued by the second respondent, who had refused the applicant entry into the State of Sarawak; and

(b) An order of mandamus to compel the first, second and third respondents to permit the applicant to enter the State of Sarawak.

FACTS

**[2]** The facts leading to this application are these. On 15 April 2011, the applicant arrived at Kuching Airport from Kuala Lumpur. At the Immigration Department Counter, the applicant was denied entry into the State of Sarawak. No pass was issued to her to enter the state. The applicant was given a notice of refusal of entry dated 15 April 2011 as per exh A3 (the impugned decision). The applicant left Sarawak on the next available flight for Kuala Lumpur.

PRELIMINARY ISSUE

**[3]** Learned counsel for the applicant Encik Tommy Thomas, raised an issue on whether learned senior federal counsel Datin Azizah Nawawi and learned state counsel of Sarawak Dato' JC Fong could be present at the stage where leave was to be obtained. He contended that since an application for leave is to be heard by way of ex parte and that there was no affidavit filed by the respondents, they were not entitled to be present in court at this stage of the proceedings. Hence, the court should just accept the statements of the applicant in the application as the truth on face value as there were no affidavits in rebuttal.

**[4]** Dato' JC Fong's countered the argument citing the decision of the late Lim Beng Choon J in *George John v Goh Eng Wah Bros Filem Sdn Bhd & 2 Ors* [1988] 1 MLJ 319. In that case, the presence of senior federal counsel at leave stage, opposing leave on ground of locus was objected to by the applicant. The learned judge observed that though leave is an ex parte application, it does not preclude any person who has interest or who is adversely affected by a decision of the court from appearing. In fact under O 53 r 8 of the RHC, any person who desires to be heard or who appears to the judge, to be a proper person, may be heard notwithstanding he is not been served with the application. The present application was served on the attorney general's chambers under O 53 r 3(3) of the RHC. It is a mandatory requirement to serve the attorney general's chambers. Following such a requirement, it makes little or no sense to deny the appearance of learned senior federal counsel. It also follows that if O 53 allows the attendance of a person who has an interest to appear even if that person was not served with the application; it would accordingly be more so the case for the representative of the attorney general considering that service on his chambers is mandatory. The reason for the presence of the representative of the attorney general and the state legal counsel here is well understood. The reliefs sought in

this application would invariably affect the public officer or authority that made the impugned decision in the State of Sarawak and the respondent cited. In my view, this in itself is sufficient to justify their presence in court. Their presence to address the issue on whether or not, there is proper application before the court may prevent waste of judicial time on vexatious and or frivolous application. That is also good enough reason bearing in mind that the courts are often burdened with cases resulting in backlog of cases in the legal system. Furthermore, no objection was raised when both learned senior federal counsel and learned state legal counsel were present at the last hearing date. They both filed their written submissions then and adjournment was sought by learned counsel for the applicant to be heard today on the basis that time is required to reply to the objections raised in their written submissions in opposing this application.

**[5]** For all these reasons, I am inclined to hold that there are good reasons for their presence in this court today. I will now proceed to deal the objections raised by them.

GROUNDS OF CHALLENGE

**[6]** Both Datin Azizah and Dato' JC Fong raised the following objections on the application for leave by the applicant:

(a) that the first respondent and the third respondent are not the relevant or proper parties in this application;

(b) that this court has no jurisdiction to hear this application; and

(c) that the applicant has no arguable case.

**[7]** The first ground of challenge is on the issue of proper party. The applicant in her application is challenging the decision in A3 issued by Timbalan Pengarah Imigresen Sarawak on behalf of Pengarah Imigresen Sarawak. Learned senior federal counsel contended that the second respondent, namely, the Pengarah Imigresen Sarawak, in issuing the impugned decision, was doing so under the direction of the state authority under s 65(1)(a) of the Immigration Act 1959/63. Section 65 provides that the director (the second respondent) must comply with any direction given by the state authority.

**[8]** It is clear that, A3 was issued by the Director of Immigration of Sarawak under the direction of the state authority, and not under the direction of the first respondent, Ketua Pengarah Imigresen, Malaysia. Hence, the submission of learned counsel for the applicant Encik Tommy Thomas that the first respondent has a general supervision relating immigration matter throughout

Malaysia under s 3(2) is misconceived. It must be noted that s 64 clearly provides for the application of Part I to VI of the Act to be subjected to Part VII, which are special provisions relating to East Malaysia. The Federal Court had decided in *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan & Anor appeal* [2002] 3 MLJ 72; [2002] 4 CLJ 105, on the implication of Part I to Part VI to the states of Sabah and Sarawak as special law. In the words of Mohd Dzaidin FCJ:

> Thus it seems clear to us that the legislature in passing Part VII was undoubtedly giving effect to the above mentioned terms and art V of the Malaysia agreement agreed upon between the Federation of Malaya and Sabah. Indeed s 64(1) referred to by the learned State attorney-general employs clear language by the words 'subject to and in accordance with this chapter' meaning that the application of Part I and VI is dependent and conditional upon Part VII. Since Part Vii has been provided as a special law, the general provisions of Parts I to VI must give way to the special provisions of Part VII in accordance with the principle of 'generalibus specialia derogant'.

**[9]** From these provisions it is clear that the decision to deny entry to the applicant to the State of Sarawak is undoubtedly within the powers of the State Authority of Sarawak pursuant to the arrangement between the federation and the State of Sabah and Sarawak in participating in the new Federation of Malaysia. Thus the impugned decision could have only been made under the direction of the state authority and not the first respondent. Not being a direction of the first respondent, it has no relevance and accordingly, no consequences to the second respondent in this case.

**[10]** The applicant also cites Ketua Menteri Sarawak in the capacity of a state authority as the third respondent. Learned state legal counsel submitted that the third respondent is not a proper party to this application. He submitted that the state authority in s 62 is defined as 'the Chief Minister or such person holding office in the State as the Chief Minister may designate for the purpose'. He drew the court's attention to the gazette notification, which shows the Chief Minister had designated the state Secretary for purposes under s 62. This was done vide *gazette* notification GNS 192/1963. Though Encik Tommy Thomas objected to the introduction of the *gazette* on the basis of introducing evidence without affidavit in support, it must be noted that *gazette* notification is public notice and requires no introduction by way of evidence. The court is not at liberty to ignore a government *gazette* and must take judicial notice thereof. The said *gazette* is a public notice, which shows that the state secretary has been designated as the state authority under s 62. It is obvious that A3 is made on the direction of the designated state authority for that purpose. The Chief Minister is therefore not a proper party because he has no involvement in the decision making process. In a judicial review proceeding, the court undertakes the

review of the decision by a decision maker, and not by any other person. Since the Chief Minister is not in any way involved in the impugned decision, he cannot be a party to the application.

**[11]** It was submitted by Encik Tommy Thomas that even if this application cited wrong parties it could be saved by virtue of O 15 r 6 of the RHC. Under O 15 r 6, no cause or matter shall be defeated because of misjoinder of parties and the Court must still determine issue affecting the proper party. However, this contention cannot hold good because the Federal Court in *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307; [2009] 6 CLJ 405 has held that O 15 r 6(2) does not apply to application made under O 53, basing on the maxim 'generalia specialibus no derogant'. According to the Federal Court in that case O 15 r 2(b) cannot be invoked to override specific provision in an O 53 application.

**[12]** Thus, since the first respondent and the third respondent are not the decision makers of the impugned decision, judicial review cannot lie against them. To put it differently, there is no decision by the first and second respondents that is before this court to review. On this ground alone, this application ought to be struck out.

JURISDICTION

**[13]** Be that as it may, I will nevertheless proceed to determine the next ground of objection raised by the respondent. The objection raised is that, this court is not possessed of jurisdiction under s 23(1) of the Courts of Judicature Act 1964. Both Datin Azizah and Dato' JC Fong contended that this application should have been made before the High Court of Sarawak. This is in line with the s 23(1) of the Courts of Judicature Act 1964. The jurisdiction of the High Court to try civil proceeding is based on:

(a) where cause of action arose; or

(b) where the defendant or one of several defendants reside or his place of business;

(c) where the facts on which the proceedings are based exist or alleged to have occurred.

**[14]** In the present case, the cause of action arose in Sarawak, the proper respondents (defendants) are in Sarawak and the facts on which the proceeding is based occurred in Sarawak. Clearly, the High Court of Sarawak would be the proper forum and this court does not have the necessary jurisdiction to hear this matter.

**[15]** The Court of Appeal in *Fung Beng Tiat v Marid Construction Co* [1996] 2 MLJ 413; [1997] 2 CLJ 1 supports the decision of the High Court in *Dayasar Corp Sdn Bhd v CP Ng & Co Sdn Bhd* [1990] 1 MLJ 191; [1990] 1 CLJ 262 on this issue of jurisdiction. In *Fung Beng Tiat*, it is stated that art 121 of the Federal Constitution provides for two separate High Courts, High Court in Malaya and the High Court in Sabah and Sarawak. There is no provision in any law for this court to transfer the present proceeding to Sarawak and it cannot be done even by consent or waiver of a party. Being bound by the Court of Appeal decision, I am in no position to transfer this proceeding to the right forum in Kuching.

THRESHOLD ISSUE

**[16]** It was also submitted by the applicant that the burden to be discharged at leave stage is only to establish an arguable case. This is the legal position as stated in the Supreme Court case of *John Peter Berthelsen v Director-General of Immigration* [1986] CLJ (Rep) 160 (SC) and also in *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association* [1990] 3 MLJ 228; [1990] 2 CLJ 734 and more recently in *Gobalakrishnan Nagapan v Director of Immigration & Ors* [2009] 2 CLJ 703. It is common ground that to succeed on leave application, the applicant needs only to show there is an arguable case, and that the case is not frivolous. The applicant contended that even though the decision of the second respondent is not subjected to a judicial review as provided under s 59A of the Act, the applicant falls within the exception to the said section.

**[17]** The applicant says she came within the exception to s 59A because the impugned decision does not comply with procedural requirement. Learned state legal counsel contended that there is nothing in the statements to this application that disclose what is the procedural non-compliance by the respondent under the Act or the Regulations governing this decision. The Federal Court in *Lee Kew Sang v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914 held that, if there is no procedural requirement provided in any law, it is not for the court to create the same. Furthermore, the application did not plead sufficient material to state the alleged procedural requirement or the breach thereof, under the Act or the Regulations.

**[18]** Learned counsel for the applicant also contended that the applicant should be allowed entry under s 67 of the Act on the ground that the applicant can enter without a pass because she is entering Sarawak, for the sole purpose of engaging in legitimate political activity. It is provided that a person has right to enter East Malaysian state for exercise of political rights.

**[19]** Again, there is nothing in the deponent's statement that supports the

contention that the applicant is entering Sarawak under s 67. Under s 67, the burden of proof that a person is entitled to enter the East Malaysian state shall lie on that person. As required in *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Berhad* [1995] 2 MLJ 442; [1995] 3 CLJ 627, no sufficient material was shown to support her case. In any event, her contention of entry based on s 67 is only made after the event.

**[20]** For all the above reasons I find merits in the objections raised by both learned senior federal counsel and the learned state legal counsel in this leave application. I therefore dismiss the application for leave with no order to costs.

*Application for leave dismissed with no order as to costs.*

Reported by Kohila Nesan